IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 171 of 2004

with

CIVIL APPLICATION No.1771 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DR.WEBER HERMANN

Versus

HON. SECRETARY

Appearance:

1. First Appeal No. 171 of 2004

M/S THAKKAR ASSOC. for Petitioner No. 1-2

MR PARTHIV B SHAH for Respondent No. 1

MR DIPEN DESAI, AGP for Respondent No.2.

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 17/03/2004

ORAL JUDGEMENT

This appeal under Section 47-A of the Guardians and Wards Act, 1890 is directed against the judgement and order dated 29.11.2003 passed by the Learned Joint District Judge, Rajkot in Civil Misc. Application No. 148 of 2003. The prayer made in the said application was as follows:-

"A. That the applicants Dr.Hermann Weber and Mrs. Margit Schultze-Weber residing at Sutristrase 15, 96049 Bamberg Germany be appointed as the guardian of the person of the ward DIYA born on 20/09/98 and the permission be granted to remove the side ward DIYA out of the jurisdiction of this Hon'ble Court. To their respective country GERMANY."

2. The appellant no.1 - Dr.Hermann Weber is a Specialist in Neurology and is working with the Mental Clinic in Bamberg. The appellant no.2 Mrs.Margit Schultze-Weber has worked as a Pharmacist for 14 years. They are aged 45 and 46 years respectively. They were desirous of adopting an Indian child. They came to India and went to Kathiawar Nirashrit Balashram at Rajkot and stayed there with an abandoned child named Diya for about 15 days. The said child was admitted to the Balashram on 20.9.2000. She was born on 20.9.1998. The appellants decided to adopt the said child. They, therefore, filed the aforesaid Civil Application, through their power of attorney holder Ashaben T Shah, Superintendent of Kathiawar Nirashrit Balashram, under the provisions of the Guardians and Wards Act praying that they be appointed as guardian of the person of the minor abandoned child DIYA and that they be granted permission to remove the child out of the jurisdiction of the Court to Germany.

3. Alongwith the said Misc. Civil Application, the following documents were produced in compliance with the directions issued by the Central Government to be followed in the case of an inter-country adoption:-

A-1. Home study report.
B-2. Photograph of Adoptive parents & Medical Certificate.
C-3. Marriage Certificate.
D-4. Declaration of health of Adoptive parents.
E-5. Certificate.
F-6 Declaration of Financial Status of parents.
G-7. Employment Certificate of adoptive parents.
H-8. Income Tax Certificate.

I-9. Bank Reference.
J-10. Property Certificate.
K-11. Declaration of Willingness certificate of parents.
L-12. Undertaking by German Agency.
M-13. Undertaking by prospective adoptive parents.
N-14. Undertaking by Agency for follow up reports.
O-15. General power of Attorney.
P-16. Permission to adoption according to their Country law.
17. Undertaking by Agency in Disruption.
18. Sterility Certificate.
19. No Conviction Certificate.
20. Passport copies of couple.
21. Four Recommendation letter.
22. Entry permission for minor from German Government.
23. G.V.C.A. German Government Certificate Approve.
24. Child Study Report with Medical Report.
25. NOC from CARA New Delhi.
26. Copy of License of Institution for Inter Country Adoption.
27. List of approved foreign agency.
29. Copy of Honourable Supreme Court's Judgement.

4. The notice of the application was issued to the Indian Council of Social Welfare, Gujarat State Branch, Ahmedabad, which is the scrutinising agency. An affidavit was filed on behalf of the said agency supporting the application made by the appellants.

5. Thus, it appears that all the guidelines issued by the Central Government in this behalf were fulfilled. However, the Learned Judge dismissed the application. The appellants have, therefore, filed this appeal challenging the said order dismissing their application.

6. As stated earlier, all the guidelines issued by the Central Government were duly complied with and the documents produced by the appellants show that they were fit to adopt the child and that their desire to adopt the child was sincere, bonafide and genuine. However, the learned Judge dismissed the application on two grounds, firstly, that no evidence regarding the sterility after 1987 was produced and the second ground was the difference in the ages of the appellants and the child. Now, the appellant no.2 was aged about 46 years when the application was made and the evidence of any fresh sterility would not be necessary. Moreover, the appellants have no child of their own. As far as the difference in ages is concerned, it is within the age

criteria fixed by the Management Committee of the Central Adoption Resource Agency by its order 16.10.2003. The appellants have filed Civil Application No. 1771 of 2004 praying for leave to produce additional evidence in the form of an affidavit. The said application is allowed and the affidavit is ordered to be taken on record. It is clear from the affidavit that the appellants are aware that the child is a minor child suffering from T.B. The evidence on record shows that Indian parents are not available to adopt such a child. In the circumstances, I am satisfied that it will be in the interest of the child if she is given in adoption to the appellants.

7. The appeal is, therefore, allowed. The judgement and order dated 29.11.2003 passed by the Learned Joint District Judge, Rajkot District, Rajkot in Civil Misc. Application No.148 of 2003 is set aside and the matter is remanded to the District Court. The learned District Judge or the Judge to whom the matter is assigned by the District Judge, shall pass formal appropriate orders allowing the said Civil Misc. Application and granting the prayer so made by the appellant in the said application on usual terms and conditions without any delay. The R&P shall be sent back immediately. There shall be no order as to costs. Direct Service permitted.

(M.C.Patel, J)
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